



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

■
Docket No: 5208-21
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitations was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 5 January 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 9 November 2022 and your rebuttal response to the AO.

You enlisted in the Navy and began a period of active duty on 23 August 1993. On 24 June 1994, you received non-judicial punishment (NJP) for violation of the Uniform Code of Military Justice (UCMJ) Article 86, failure to go to your appointed place of duty, Article 92, failure to obey order or regulation, and Article 112, drunk on duty. Additionally, on 24 June 1994, you were issued an administrative remarks (Page 13) retention warning informing you that you were being retained in the naval service; however, deficiencies in your performance were identified and you were provided recommendations for corrective action concerning these deficiencies.

On 6 July 1995, you were evaluated, diagnosed and recommended for administrative separation by reason of an adjustment disorder with mixed emotional features and personality disorder with borderline and passive-aggressive personality features.

On 13 July 1995, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense as evidenced by your NJP conviction for violation of the UCMJ, Article 92 and Article 112, and convenience of the government due to a personality disorder. You were advised of, and waived, your procedural rights, including your right to consult with and be represented by military counsel, and your right to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with a general (under honorable conditions) characterization of service. The SA approved the CO's recommendation and directed your administrative discharge from the Navy with a general (under honorable conditions) characterization of service by reason of misconduct due to commission of a serious offense. On 21 August 1995, you were so discharged.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 9 November 2021. The AO noted that you were diagnosed with an adjustment disorder and a personality disorder, indicating that you were unsuitable for military service. It is reasonable that your behavior which rendered you unsuitable for military service, was coincident with the misconduct that resulted in your NJP. Unfortunately, there is insufficient information to consider whether an unfitting mental health condition, such as an adjustment disorder, may have mitigated your misconduct. Additional information, such as post-service records describing your mental health diagnosis, symptoms, and their specific link to your misconduct, are required to render an alternate opinion. Should you choose to submit additional records, they will be reviewed in the context of your claims. The AO concluded by opining that based on the current available evidence, there is evidence that you may have incurred an unfitting mental health condition during your military service, but there is insufficient evidence that your misconduct could be mitigated by an unfitting mental health condition.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contentions that: 1) your chain of command made a material error of discretion by failing to adequately consider the way in which your mental health conditions were responsible for the poor decision-making that led to your separation; 2) in accordance with the Kurta Memo, your request should be given liberal consideration because you were suffering from acute mental health challenges at the time of your separation; 3) your behavior, while reprehensible, was the result of mental health complications, and you were discharged without the appropriate regard to your prior service or rehabilitation potential; 4) you were not given an adequate opportunity to rehabilitate from your misconduct and was therefore denied a meaningful opportunity to continue to serve; 5) if you had been properly treated by medical professionals following your diagnosis and provided guidance by your leadership, you would have been an excellent candidate for rehabilitation and could have continued serving your country honorably; and 6) you have a substantial volume of evidence in your favor.

Your further contend in your rebuttal response to the AO that: 1) your military records do not accurately reflect the situation that led to your separation from the Navy; 2) the record shows that you were not discharged because of your non-judicial punishment; 3) at the time of your discharge, you were requesting a hardship discharge and your command declined your request; and 4) the medical personnel offered to do you a “favor” by diagnosing you with a personality disorder, although the diagnosis was made with altruistic intentions, it was incorrect and therefore the catalyst that led to your improper separation.

Unfortunately, after careful consideration of your contentions, the AO, your submission of supporting documentation, your rebuttal response to the AO, and applying liberal consideration, the Board discerned no procedural defect, impropriety, or inequity in your discharge and determined your misconduct warranted a general (under honorable conditions) character of service. Further, the Board, relying on the AO, concluded there was insufficient evidence you suffered from a mental health condition in-service or that your misconduct could be attributed to a mental health condition. The Board, applying liberal consideration, did not find evidence of an error or injustice that warrants relief.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to your contentions as previously discussed, and your desire to upgrade your discharge character of service, change narrative reason for separation, separation code, reentry code and remove documentation from your military record that you suffered from a personality disorder during your service in the Air Force. Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your NJP and your diagnosed medical condition outweighed these mitigating factors. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

1/19/2022

X

█
Executive Director

Signed by: █